

## Department of Veterans Affairs

## § 1.933

Claims Collection Litigation Report and the Committee's memorandum should be sent to VA Central Office, Office of Financial Management, for subsequent referral to the Department of Justice.

(Authority: 31 U.S.C. 3711)

[57 FR 47263, Oct. 15, 1992]

### § 1.931 Inability to pay.

(a) A claim may be compromised by VA pursuant to §§ 1.930 through 1.938 if VA cannot collect the full amount of the debt because of:

(1) The debtor's inability to pay the full amount of the debt within a reasonable amount of time; or

(2) The refusal of the debtor to pay the claim in full and the inability of VA to collect the debt in full within a reasonable time by means of enforced collection.

(b) In determining the debtor's ability to pay, the following factors, among others, may be considered:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor; and

(5) The availability of assets or income which may be realized by means of enforced collection procedures.

(c) VA will give consideration to the applicable exemptions available to the debtor under various State and Federal laws in determining the ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at a forced sale may be properly considered in determining the ability to enforce collection. A compromise effected under §§ 1.930 through 1.938 should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time in which collection will take place.

(d) The payment of a compromise in installments is to be discouraged. However, if payment of a compromise in installments is necessary, then a legally enforceable agreement shall be obtained from the debtor for the reinstatement of the original amount of the indebted-

ness, less any amounts paid there on by the debtor, and also an acceleration of the balance due upon default. Such an agreement, together with security as described in § 1.917, should be obtained in every case possible.

(e) If VA files do not contain recent credit information as a basis for assessing a compromise proposal, such information shall be obtained from the debtor by obtaining a statement, executed under penalty of perjury, showing the debtor's assets and liabilities, income and expenses. Forms such as VA Form 4-5655 "Financial Status Report" or Department of Justice Forms OBD-500 or OBD-500B shall be used to obtain this information. Similar data may be obtained from corporate debtors by using a form, such as Department of Justice Form OBD-500C or by resort to balance sheets and such additional data as may be required.

(Authority: 31 U.S.C. 3711)

[52 FR 42109, Nov. 3, 1987]

### § 1.932 Litigative possibilities.

VA will attempt to compromise claims when there is a real doubt as to the Government's ability to prove its case in court for the full amount claimed either because of the legal issues involved or bona fide dispute as to the facts. The amount accepted in compromise will fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment having due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. Proportionate weight will be given the court costs and attorney fees which may be assessed against the Government if it is unsuccessful in litigation, having regard for the litigative risks involved. (See 28 U.S.C. 2412.)

[52 FR 42110, Nov. 3, 1987]

### § 1.933 Cost of collecting claim.

The Department of Veterans Affairs will attempt to compromise claims when the cost of collection does not justify enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an

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appropriate discount for the administrative and litigative costs of collection, having regard for the time required to effect collection. The cost of collection normally will be a proportionately great factor in the settlement of small claims.

#### § 1.934 Enforcement policy.

Statutory penalties, interest, and administrative costs which are established as an aid to enforcement and to compel compliance may be compromised pursuant to §§ 1.930 through 1.938. However, such additional costs on debts will be considered for compromise only in connection with compromise of the total amount of the debt (original amount of debt plus interest and costs). Interest, administrative costs, and other additional costs will never be considered for compromise separately or exclusively from the original amount of the debt.

(Authority: 31 U.S.C. 3711)

[52 FR 42110, Nov. 3, 1987]

#### § 1.935 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one such debtor until the other or others pay their proportionate shares. VA shall not attempt to allocate the burden of paying such claims as between the debtors, but shall proceed to liquidate the indebtedness as quickly as possible. Proper measures shall be taken to insure that a compromise with one such debtor does not release VA's claim against the remaining debtor. The amount of a compromise accepted from one debtor shall not be considered as a precedent or as morally binding in determining the amount which will be required from the other debtor held to be jointly and severally liable on the claim.

(Authority: 31 U.S.C. 3711)

[52 FR 42110, Nov. 3, 1987]

#### 38 CFR Ch. I (7-1-97 Edition)

#### § 1.936 Settlement for a combination of reasons.

VA may compromise specific claims for any combination of reasons authorized by sections 1.930-1.938.

(Authority: 31 U.S.C. 3711)

[57 FR 47264, Oct. 15, 1992]

#### § 1.937 Further review of compromise offers.

VA may refer to the GAO or Department of Justice firm written offers, plus supporting data, from debtors when there is doubt whether the offers should be accepted.

[52 FR 42110, Nov. 3, 1987]

#### § 1.938 Restrictions.

VA will not accept either a percentage of a debtor's profits or stock in a debtor corporation in compromise of a claim. In negotiating a compromise with a business concern, consideration shall be given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

[52 FR 42110, Nov. 3, 1987]

#### STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTION

SOURCE: Sections 1.940 to 1.943 appear at 32 FR 2615, Feb. 8, 1967, unless otherwise noted.

#### § 1.940 Scope and application.

(a) The standards set forth in §§ 1.940 through 1.943 apply to the suspension and or termination of collection action pursuant to 31 U.S.C. 3711(a)(3) on claims which do not exceed \$100,000, exclusive of interest and other late payment charges, after deducting the amount of partial payments or collections, if any. VA may suspend or terminate collection action under §§ 1.940 through 1.943 with respect to claims for money or property arising out of the Department's activities prior to the referral of such claims to GAO or the Department of Justice for litigation. The Comptroller General may authorize such authority with respect to such claims referred to GAO by VA prior to